

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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| In the Matter of |) | |
| |) | |
| Consumer Protection in the Broadband Era | |) WC Docket No. |
| 05-271 | | |
| |) | |
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**COMMENTS OF THE
NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE**

INTRODUCTION AND SUMMARY

On October 17, 2005, the Commission issued a Public Notice in the above-entitled proceeding inviting comments on whether consumer protection regulations adopted pursuant to the Commission’s authority under Title I of the Communications Act of 1934 (“the Act”) should apply to broadband Internet access service, regardless of the underlying technology utilized to offer that service. The New York State Department of Public Service ("NYDPS") submits these comments in response to the aforementioned Public Notice.

The Commission asks, among other things, how state and federal efforts can be harmonized in the area of broadband consumer protections, and seems to suggest that the States should only enforce federal rules.¹ The

¹ *Consumer Protection in the Broadband Era*, WC Docket No. 05-271, Notice of Proposed Rulemaking, 20 FCC Rcd 14853, ¶ 158 (“NPRM”).

Commission also inquires whether there are areas of consumer protection which should be subject to consumer protection regulation, beyond those specific areas listed in the NPRM. In sum, States should not be limited to a role of merely enforcing federal rules, but instead should continue their longstanding practice of providing state-specific consumer protections to subscribers of communications services, by applying their dedicated front-line resources and expertise to protecting the interests of broadband consumers. Areas of particular concern to the New York Public Service Commission (“NYPSC”) include supervision of service quality and network reliability.

DISCUSSION

The States should not be limited to enforcing federal consumer protection standards.

A. Broadband consumer protection responsibilities should be divided according to the NARUC functional approach.

The Commission acknowledges in the NPRM that the States play an important role in ensuring that public safety and consumer protection goals are met.² Indeed, the States have a long history of protecting consumer interests in the communications marketplace, as a natural outgrowth of their interests in providing for the general health, safety, and welfare of their citizens. State consumer protection interests are not diminished by the evolution from narrowband to broadband communications services, and are

² NPRM at ¶ 158.

likewise indifferent to whether the transmitted information is voice, video or text. Uniform federal rules would forego the benefits of the States' experience with consumer protection matters, as well as ignore differences in local market conditions. Likewise, uniform rules at this stage would shortcut the process of state-level experimentation, which can reveal successful strategies and best practices. Given the States' experience, resources, and interests, the Commission should not limit States to enforcing federal rules.

Rather, the States and the Commission can best work together under the “functional” approach advocated by the National Association of Regulatory Utility Commissioners. This functional approach, in general, would divide consumer protection responsibilities in a manner which corresponds to the respective strengths of each level of government. At minimum, the federal/state division of responsibility should reflect the scope of the problem. The Commission is well suited to handle consumer protection issues which arise on a national or regional level. Conversely, the States are better positioned to handle such issues at the state and local level.

B. States should handle network reliability and service quality issues at the state and local levels.

The kinds of issues that the States are best situated to handle include, among others, ensuring that consumers are provided with reliable broadband networks and high quality broadband services. In general, broadband consumer protection must embrace those protections which are critical for public safety and adequate service. Two areas of consumer protection which

have been of particular concern to the NYPSC are service quality and network reliability.³ Consumers expect that the integrity of network facilities will be maintained, so that communications will reliably reach their destinations and that the quality of service will be high. States have a vested interest in ensuring adequate infrastructure, good design practice and rapid post-disaster recovery in order to ascertain that reliable telecommunications are consistently available for commerce and public safety. States must also ensure that broadband consumers are afforded high quality service including, for example, error-free transmission, timely responses to service problems, and well-maintained systems. Regardless of whether facilities are carrying digital voice, video, or text, the rate at which data is transmitted over those facilities (i.e., narrowband versus broadband) should not be grounds for overriding legitimate state interests.

Furthering network reliability and service quality consumer protection involves ground-level work; for example, inspecting the condition of poles, ascertaining proper pole clearances between different utility services, and tracking local service outages. It also requires the establishment of clear and enforceable standards – something which States such as New York have been doing for some time, and are regularly refining. Likewise, States can and do

³ The NYPSC has defined network reliability as “the day-to-day dependability of the network, its ability to continue to operate during a natural or man-made event that affects some portion of the network, and the degree of redundancy – or diversity – needed in the network.” Case 03-C-0922, *Proceeding on Motion of the Commission to Examine Telephone Network Reliability*, Order Instituting Proceeding, p. 1 (issued July 21, 2003).

respond quickly to network outages and service quality problems which initially and/or only appear in limited geographic areas. Conversely, the Commission should have a role in mitigating network outages and service-quality issues which occur on a regional or national level.⁴

CONCLUSION

For the foregoing reasons, the Commission should apply current consumer protection rules to broadband service consumer issues of national or regional scope, and should rely upon the States to handle these issues at the state and local level, especially where network reliability and service quality are concerned. The Commission should not limit the States' role to enforcement of federal standards.

Respectfully submitted,

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Dated: January 17, 2006
Albany, New York

⁴ The Commission's current network outage reporting rules are clearly geared toward monitoring only large-scale outages and outages affecting critical facilities such as airports and military installations. *See* 47 C.F.R. § 63.100.